IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7709 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

RAGHABHAI JALMABHAI TARAL

Appearance:

MR HARDIK RAVAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 20/03/2001

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation through its Divisional Controller-Palanpur (in short `Corporation'), petitioner has filed this petition under Articles 226 and 227 of the Constitution of India challenging the judgment and award dated 16th October, 1987, passed by the Presiding Officer, Labour Court, Ahmedabad in Reference (LCA) No.268 of 1986. The Labour Court by its impugned judgment and award partially

allowed the reference and set aside the punishment of dismissal inflicted upon Shri Raghabhai Jalmabhai Taral respondent herein. The Labour Court directed the Corporation to reinstate respondent-workman on his original post with continuity of service but without backwages within one month from the date of punishment of the award.

2. The facts giving rise to this application are as under:

2.1 The respondent-workman was working as a conductor in the service of the Corporation. From the record it appears that from 1981 to 1983 Corporation found for nine occasions the respondent to be guilty for certain misconduct.

2.2 Present Controversy:

On 24th June, 1983, respondent was put on duty on Tharad - Devata local route. A checking party of the petitioner-Corporation had carried out a surprise check and it was found that respondent was guilty of certain irregularities. It was observed that he had collected fare from various passengers but he had not issued tickets for the same till the time the checking party had carried out the check. A report of the irregularity was sent to the Competent Authority of the petitioner-Corporation. The petitioner Corporation had issued a chargesheet to the respondent for the misconduct committed by him. During the departmental inquiry, respondent was given full and complete opportunity to defend himself. A departmental inquiry was also conducted in accordance with the principles of natural justice as also in accordance with the Discipline and Appeal Procedure Rules of the Corporation. At the end of the departmental inquiry, respondent was dismissed from the services. The respondent being aggrieved by the order of his dismissal had preferred an industrial dispute being Reference No. (LCA) No.268 of 1986 before the Labour Court, Ahmedabad.

2.3 Before the Labour Court the respondent contended that departmental inquiry which was held against him was contrary to the principles of natural justice and that he was not guilty to the offence levelled against him. He also further submitted that the dismissal order ought to be set aside and he be reinstated back in the services.

2.4 The petitioner-Corporation had submitted statement of reply and contended before the Labour Court

that, in fact the respondent-workman was guilty of a very serious offence of misappropriation. It was pointed out that respondent had not issued tickets inspite of the fact that fare had been collected from the passengers. It was observed that there were certain unpunched tickets which were collected from the respondent-workman. It was also contended by the petitioner-Corporation that, even in the past, from the year 1981 to 1983 the respondent-workman had been guilty of certain misconducts. It was hence contended that the reference deserved to be set aside.

2.5 The Labour Court by its judgment and award dated 16.10.1987 after considering the evidence on record pleased come to the conclusion that the workman has committed negligence in not issuing the tickets in time, however, the punishment of dismissal inflicted is not commensurate with the misconduct. The Labour Court observed in the judgment that the respondent-workman is a young man and his case requires to be considered sympathetically because of his services are terminated by way of dismissal then he will face unemployment and a chance to improve requires to be given to the workman concerned and instead of dismissal lighter punishment if awarded can meet the ends of justice and, therefore, instead of dismissal of the workman his yearly increment should be withheld for two years with cumulative effect.

2.6 Being aggrieved and dissatisfied with the aforesaid judgment and award of the Labour Court, the petitioner-Corporation has filed present petition in June 1988 before this Court.

3. Learned counsel for the petitioner submitted that the State Road Transport Corporation is constituted under the Sec.3 of the Road Transport Corporations Act, 1950. The Corporation has been established to offer advantages to the public, trade and industry by the development of road transport and for the desirability of co-ordinating any form of road transport with any other form of transport, and also for the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein. He has referred the certain sections of the Road Transport Corporations Act, 1950, which reads as under:

Section 4 of the Act provides for incorporation.
Section 5 of the Act provides for management of corporation and board of directors. Section 44 of the Act provides for power to make rules.

Section 45 of the Act provides for power to make regulations.

Under Section 45 the Corporation has framed regulations which is known as Gujarat State Transport Employees Service Regulations.

Regulation 1 provides that these regulations may be called the "Gujarat State Transport Employees' Service Regulations".

Regulation 80 of the Corporation reads as under:

"The Corporation may specify the acts of misconduct or omission which shall be liable to be treated as "acts of misconduct" or "minor lapses or delinquencies" and also prescribe a procedure for dealing with cases of acts of misconduct and minor lapses and delinquencies and shall appoint appropriate authorities to impose punishments and to hear appeals or order disciplinary action."

3.1 In view of the provisions contained in Regulation 80 of the Gujarat State Transport Employees Regulations, the Corporation has framed Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees.

Regulation 3 provides that there shall be two clauses of offences:

(a) Acts of misconduct and

(b) Minor lapses and delinquencies.

(ii) of clause 3 provides that acts of misconduct are those which have been specified in Schedule `A' with such modifications as may be specified by the Corporation from time to time for which the maximum penalty is as prescribed in Clause 7, according to the gravity of the misconduct.

(iii) of clause 3 provides that minor lapses and delinquencies are those included in Schedule `B' with any modification that would be effected by the administration from time to time which may result in warning, reprimand and fines upto the limit prescribed in Clause 7.

Clause 7 provides the punishments may be awarded

for good and sufficient reasons, including breaches of any rules of conduct, or for committing any of the offences mentioned in the Schedules, according to the gravity of the each case. The same are dealing with minor lapses and delinquencies and acts of misconduct.

Schedule A of the Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees provides acts of misconduct.

Clause 7 of the said Schedule provides as under:

"(a) Failure, without reasonable cause, on the part of Conductor to issue any ticket and thereby permitting ticketless travel and non-issue of ticket to a passenger by a Conductor after recovery of fares, or failure to issue a ticket to a passenger within the time prescribed in the orders of the Corporation.

(b) Failure on the part of checking staff to report offences on the part of Conductors for ticketless travel or for non-issue of tickets."

Clause 11 of the said Schedule provides for gross negligence resulting in serious loss to the Corporation or inconvenience to the public or both.

Clause 12 of the said Schedule provides for (a) Theft (b) Fraud, dishonesty or misappropriation in connection with the business or the property of the Corporation.

Clause 23 of the said Schedule provides for collecting money within the premises or vehicles of the Corporation except as sanctioned by any law for the time being in force or with the permission of the Competent Authority.

Clause 27 of the said Schedule provides for repeated or continued negligence or neglect of work.

Clause 34 of the said Schedule provides for excess over Rs.25/- found with a conductor without proper explanation or repeated excesses of smaller amounts found with a Conductor.

Clause 35 of the said Schedule provides for

Under-issue of tickets i.e. issue of tickets for less than the actual distance travelled by a passenger and failure on the part of a Conductor to maintain records in the proper manner.

Schedule B provides for Minor lapses and Delinquencies.

3.2 On basis of this, the learned advocate for the Corporation stated that when act of employee conductor amounts to dishonesty or fraud and when workman is disloyal to the Corporation and when his act is falling within any of the above clauses it will amount to a serious misconduct and for that the Corporation/Competent Authority is entitled to dismiss the employee from the service. It has been stated that the employee is engaging in corruption activities and misconduct is proved then Labour Court has unnecessarily shown a sympathy to the workman by reinstating him in the service.

3.3 The petitioner-Corporation contended that the Labour Court has erred in not appreciating the misconduct of respondent was of a very serious nature and hence the order of dismissal was just and proper. It was further submitted that the Labour Court has erred in coming to the conclusion that the punishment of dismissal is not proportionate to the misconduct committed by the respondent. It was further submitted that the Labour Court has not properly exercised jurisdiction under Section 11(A) of the Industrial Disputes Act.

3.4 Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation Vs. A.K. Parul reported in (1998) 9 SCC 416. He has also relied upon another judgment of the Hon'ble Supreme Court in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.) Etc., Vs. Secretary, Sahakari Noukarara Sangh, Etc. reported in AIR Supreme Court Weekly 3439, particularly paras 6,7 and 8 the Hon'ble Supreme Court observed as under:

"Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari, (1996) 2 SCC 714) : (1996 AIR SCW 1309: AIR 1996 SC 1249:1996 Lab IC 1056). In U.P.State Road Transport Corporation v. Basudeo Chaudhary, (1997) 11 SCC 370 this Court set aside the judgment passed by the High Court in a case where a conductor serving with the U.P.State Road

Transport Corporation was removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs.65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering Rs.5.35 per head and also by making entry in the way bill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. v. Kala Singh, (1997) 6 SCC 159: (1997 AIR SCW 2625: AIR SC 2661: 1997 Lab IC 2649), this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres where there were less fat contents. The Court held that "in view of proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the I.D. Act to grant relief with minor penalty."

"In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workman with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the Management."

"In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

3.5 Learned counsel for the petitioner has further relied upon the Division Bench judgment of this Court in the case of Gujarat State Road Transport Corporation Vs.

Kacheraji Motiji Parmar reported in GLR 1993(1) 302 and in the case of Mihir Textile Ltd. Vs. Narayansing Layaksing reported in 1993(1) GCD 137 (Guj.) and also judgment of this Court (Coram: K.M.Mehta, J.) passed in the Special Civil Application No.3244 of 1992 decided on 8th November, 2000.

3.6 In view of the aforesaid facts and circumstances of the case and also in view of the judgments of the Hon'ble Supreme Court, the learned counsel for the petitioner submitted that, in case of dismissal or misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the Corporation and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice etc., on the part of the Corporation. It was further submitted that it was the duty of the employed workman to issue tickets of correct fare and also to collect correct fare from the passengers depending upon the nature of the journey. The duty is cast from the respondent employee in this petition. It has been stated the respondent employee failed to perform his duty and, in fact, he has acted negligently in discharging his duties. It was submitted that the workman has not observed his duty properly and has not performed his worked entrusted by the Corporation. He was grossly negligent in performing his duty.

3.7 In view of the same, it was submitted that the Labour Court should have confirmed the findings of the Corporation and dismissing the workman from the service, particularly after considering the adverse remarks of the workman in this behalf, particularly looking to the past conduct of the employee, the report of the Enquiry Officer and the powers vested under Section 11(A) of the Act, the Tribunal has not properly exercised the jurisdiction vested under Section 11(A) of the Act.

4. In my view, under Sec.11(A) of the Act vests wide discretionary jurisdiction in the industrial adjudicators. However, an adjudicator cannot exercise this discretionary power in an arbitrary manner. Discretion has to be exercised in a judicial and judicious manner and in accordance with the well-recognised principles in that regard and has to examine carefully the facts and circumstances of each case. Now the test is not as to whether the punishment is too harsh or shockingly disproportionate with the proved act of misconduct. But the test is as to whether the punishment is commensurate with the act of misconduct and is not unfair. In my view, if the Tribunal exercises

its jurisdiction mechanically and without weighing the circumstances of the case or in disregard of the judicial principles and therefore it would be no exercise of discretion. In my view, the Tribunal exceeded his jurisdiction. The decision of the Tribunal is not reasonably founded on evidence and has failed to take into account the matters which he ought to have taken into account or has taken into account. The Tribunal has taken into account irrelevant or extraneous matters. It has misinterpreted or misapplied the law. In my view, the Tribunal has failed to exercise jurisdiction to consider the service of the workman as continuous. In my view, the Tribunal has unnecessarily shown sympathy to the workman inspite of the fact that there is a clear case of misappropriation of funds of the Corporation.

5. In the facts and circumstances of the case and in view of the discussions made hereinabove, this petition is allowed. The order of the Labour Court dated 16th October, 1987, passed by the Presiding Officer, Labour Court, Ahmedabad, in Reference (LCA) No.268 of 1986 giving reinstatement to the respondent-workman is bad in law and the same is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(K.M. Mehta, J.)

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